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NO. 20552

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ISLAND AIRLINES, INCORPORATED,)
)
Petitioner,)
)
vs.)
)
CIVIL AERONAUTICS BOARD,)
)
Respondent.)
)
_____)

BRIEF OF AMICUS CURIAE
STATE OF HAWAII

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BRIEF OF AMICUS CURIAE
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Pursuant to Rule 18 of this Court, STATE OF HAWAII files this Brief as amicus curiae in the above-entitled proceeding. The State of Hawaii still maintains that jurisdiction over inter-island common-carrier air transportation is properly vested in its Public Utilities Commission, as indicated in the opinion of its Supreme Court on June 21, 1963, In re Island Airlines, 47 Haw. 87, 384 P.2d 536. While the State of Hawaii feels bound on the jurisdictional issue so decided, it nonetheless recognizes that this Court recently rendered a contrary position in the injunction proceedings of Island Airlines, Inc. vs. C.A.B., 352 F.2d 735.

Without prejudice to its position on jurisdiction, the State of Hawaii files this Brief in order to clarify its position on two points:

(1) That it presently has the necessary law and machinery to properly regulate common-carrier air-transportation service between the islands, and

(2) That public need and necessity for such local service have been adequately demonstrated.

STATE OF HAWAII HAS THE NECESSARY
MACHINERY TO REGULATE INTER-ISLAND
AIR TRANSPORTATION

Since the enactment of the Public Utilities statute in 1913, the State of Hawaii has continuously regulated its public utilities. Its present Public Utilities Commission, consisting of five members, has provided needed meaningful regulation of all public utilities as defined in the statute on all islands. The Commissioners representing the major four islands of the Hawaiian group (Oahu, Hawaii, Maui and Kauai) have served efficiently on a part-time, staggered-term basis for nominal compensation.

This Commission has provided necessary regulation of rates, fares, charges, classification, rules and practices, financial transactions, securities and other regulatory matters dealing with public utilities corporations. It is

even now regulating the two inter-island air common carriers-- Hawaiian Airlines and Aloha Airlines--C.A.B. certified air carriers, in its issuance of securities and other financial transactions. Even before Hawaiian statehood, both air carriers sought prior approval of the Hawaiian Public Utilities Commission before issuance of stocks, certificates, bonds, notes and other evidence of indebtedness as required by State statutes.

LOCAL NEED HAS BEEN ADEQUATELY SHOWN

Since the initial application of Island Airlines filed before the Public Utilities Commission for approval of rates, fares, and schedules in early 1960, many public hearings on all major islands have been held. At these hearings need and necessity for a local inter-island low-cost common-carrier air-passenger service linking all islands in the Hawaiian group have been demonstrated. Almost all witnesses in testimony elicited during these five intermittent years of hearings on the Island Airlines' rate applications before the Public Utilities Commission have voiced strong support for and urged early approval of such service. The orderly development of a total State economy depends greatly on a local low-cost mass air-transportation



service. Such service will enable local residents to visit neighbors, friends and relatives on other islands, providing a major air thoroughfare for business and pleasure travel at economical rates.

The short history of Island Airlines' operation in spring, 1963, was marked by solid local support for such economical mass air-transportation service. Moreover, the surveys conducted before, during and after such service affirm the finding that more than half of all local residents have not visited other islands primarily because of cost considerations. These parties have voiced their desires to utilize and support a low-cost air common-carrier service if provided for local residents.

Decision and Order 1502 filed February 1, 1965, by the Hawaii Public Utilities Commission came after months of prolonged hearings, testimony and other evidence submitted by Island Airlines and the C.A.B. certified carriers--Hawaiian and Aloha Airlines. This authorization issued by the Commission on February 1, 1965, approving Island Airlines' proposed rates and charges authorized Island Airlines to operate on the proposed schedules and rates for a test period of one year beginning six months after the effective date of the order, or such extensions as the Commission might grant. The authorization to operate during the test period

clearly confined Island Airlines to providing a strictly local "Sky Bus" service and excluded any interstate operations. The Commission, in its decision, evidenced recognition that the need for economical local mass common-carrier air transportation would be served by Island Airlines, whereas Aloha and Hawaiian would continue to provide for the tourist needs.

Both houses of the State Legislature have, after study, passed concurrent resolutions requesting exemption by the Civil Aeronautics Board of Hawaiian intra-state air carriers from Title IV of the Federal Aviation Act of 1958, as amended. Said resolutions have been attached as exhibits in the hearings before the Civil Aeronautics Board and included in the record before this Court. These resolutions clearly point out the legislative findings of the local need to link the islands into one major State.

CONCLUSION

However competent and well-meaning a federal agency such as the Civil Aeronautics Board may be, it cannot be denied that a State agency acutely sensitive, aware and attuned to ever changing local needs and conditions can provide more effective and meaningful controls and regulations for Hawaii's air-transportation problems.



WHEREFORE, the State of Hawaii submits that if permitted, its Public Utilities Commission can, will and should properly regulate, enforce and control all economic regulations for local, intra-state common-carrier air service serving local needs and for local conditions.

DATED: Honolulu, Hawaii, February 28, 1966.

STATE OF HAWAII, Amicus Curiae
By BERT T. KOBAYASHI
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By /s/ Arthur S. K. Fong
ARTHUR S. K. FONG
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by depositing the same in the United States Post Office at Honolulu, Hawaii, properly addressed and postage prepaid to:

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DATED: Honolulu, Hawaii, March 4th, 1966.

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